inventoried the various ways in which a defendant's liberty is routinely restricted after such a finding and before trial."

One way a defendant's liberty is restricted is through fingerprinting.

"If we do that for fingerprints, why don't we do it for DNA?" Asplen asked. "Is DNA different? No, it's not. What gets included in a fingerprint database? Is it your fingerprint? Well, no, it's not. It is a digitalized representation of your fingerprint. What is in a DNA database? Your DNA? No, it is a digitalized representation of your DNA at 13 loci. So, it really is a digitalized representation that couldn't tell us any more about you than your fingerprint can. Your fingerprint can't tell you if you're predisposed to certain diseases. Neither can DNA. Your fingerprint can't tell us if you have a disease, nor can the DNA test that we do. It doesn't do any of those things. It is only good for the purpose of identification. That's it.

"So, there is no real, legitimate distinction between DNA and fingerprints," Asplen continued. "Now, I'll give one exception to that. The biological sample that is taken that the DNA test is run on, that biological sample, if it were to be tested for other things, it could be. That could in fact be tested for all these other things. There's a couple problems with that. Number one, we don't have the money or the time to do the DNA tests that we're supposed to do. To do a simple 13 STR loci test and get it turned around in six months is a huge challenge. "To suggest that somehow we're going to be interested in doing all these other bad tests comes down to a fundamental question," he said. "Do you trust law enforcement or not?"

Sharp disagreed.

"The question is not about the public's trust of law enforcement, but rather the constitutional limitations upon the government's ability to circumvent the Fourth Amendment's warrant requirement in the collection of DNA evidence from individuals who have not been convicted of any offense," he said. "… government officials can always point to the interest of 'public safety' to justify why they need greater authority to conduct searches without complying with the Fourth Amendment.

"As a country, however, we enshrined the Fourth Amendment's warrant requirement into our constitution precisely because our forefathers recognized the tendency for the state to seek to expand its authority at the expense of individual liberty," Sharp continued.

Whether the database expands or not, KSP lab DNA Database Supervisor Stacy Warnecke said the technology already is solving cases by providing investigative leads.

"As we work more cases and process more offenders, the number of hits keeps going up," she said. "All we can do is add more offender samples (i.e. add arrestees) and keep working cases. It takes a well-funded and sufficiently-staffed laboratory to do both."

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Christopher Asplen

Christopher Asplen, Esq., is an internationally known expert in forensic technology, particularly in DNA. He has consulted directly with the Ministers of Justice in several countries and has been asked to assess the legislative strategies of DNA databasing in European countries by the European Network of Forensic Science Institutes. Prior to his work with the foreign governments on technology policy, Asplen was an Assistant U.S. Attorney in Washington, D.C. While serving in that role, he was appointed executive director of the U.S. Attorney General's National Commission on the Future of DNA Evidence. Asplen worked closely with Attorneys General Janet Reno and John Ashcroft to develop DNA policy for the U.S. Department of Justice and also testified before Congress to successfully advocate for the appropriation of more than $160 million for forensic DNA testing. ■

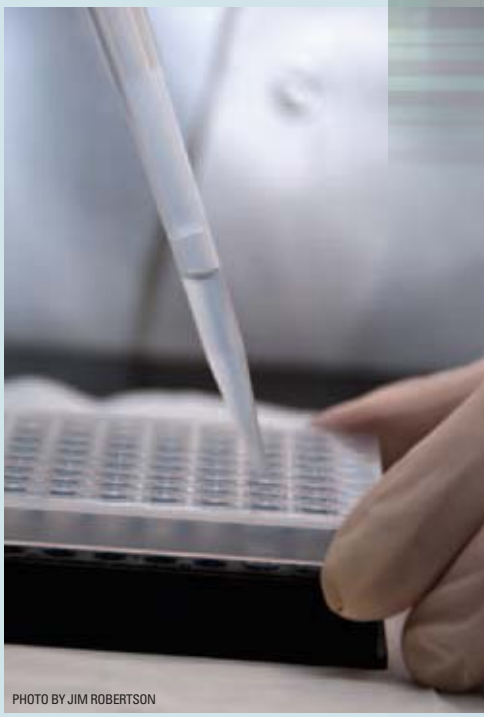
CODIS: The DNA Database

The Combined DNA Index System was established in 1990 by the Federal Bureau of Investigation's laboratory. The system began as a pilot software project and served 14 state and local forensic laboratories, according to the FBI website. Four years later, the DNA Identification Act formalized use of the system for law enforcement and the National DNA Index System was built.

When DNA evidence is collected from a crime scene, CODIS searches its database for a match. When matches are made, it provides investigative leads to officers working the case. It also searches for other matches from cases in its database in which the offender's identity is unknown.

The DNA profile stored in the database consists of one or two alleles at the 13 CODIS core loci. No names or other personal identifiers belonging to the DNA subject are stored in the database.

For details, visit http://www.fbi.gov/about-us/lab/codis ■



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